## REMARKS

Claims 1-30 are pending. Claims 8, 9, 18, 19, 28, and 29 have been cancelled. Claims 1-7, 10-17, 20-27, and 30 have been amended. Claims 31-33 are new. Claims 1-7, 10-17, 20-27, and 30-33 remain in the application. No new matter has been entered.

Claims 1-30 stand rejected under 35 U.S.C. § 112, second paragraph, for indefiniteness. Independent Claims 1, 11, and 21 have been amended to clarify that each contingency provides an uncertainty that an event related to the information will occur. Support for the claim amendments can be found in the specification on p. 5, ¶ 2. No new matter has been entered. Claims 8, 9, 18, 19, 28, and 29 have been canceled. Withdrawal of the rejection under 35 U.S.C. 112, second paragraph, is respectfully requested.

Claims 1, 2, 6-12, 16-22, and 26-30 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,794,207, issued to Walker et al. ("Walker") in view of U.S. Patent No. 6,529,885, issued to Johnson ("Johnson"). Applicant traverses the rejection.

To establish a *prima facie* case of obviousness, the examiner has the burden of proving that (1) there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the reference teachings; (2) there is a reasonable expectation of success; and (3) the combined references teach or suggest all the claim limitations. MPEP § 2143. A *prima facie* of obviousness case has not been shown.

The Walker patent discloses a method and apparatus for facilitating buyer-driven conditional purchase offers (CPOs). A buyer who wishes to make a purchase accesses a central controller located at a remote server and creates a CPO by specifying the subject of the goods and any other conditions that the buyer requires (C. 8, l. 44-49). The buyer logs on to the central controller, creates the CPO, and disconnects from the network (C. 15, l. 49-50). When formulating the CPO, the buyer adds the conditions that are the terms of the CPO that allow

the buyer to tailor the CPO for his specific needs (C. 16, l. 19-45). Standard legal provisions and language are integrated with the CPO to "fill in the gaps" of the buyer's purchase offer (C. 8, l. 61-63). The CPO is made available to potential sellers by posting the CPO on a Web page of the central controller (C. 15, l. 50-52). Seller responses are transmitted electronically to the central controller, which contacts the buyer to indicate that the CPO has been bound (C. 15, l. 56-58). The central controller transfers credit card information to the seller as soon as the CPO is bound (C. 15, l. 58-59). Various methods of payment may be utilized, including credit cards, and the timing of payment can be varied, including paying the seller immediately after the seller accepts the CPO or delayed until after the seller performs his obligations under the contract (C. 9, l. 33-43).

The Johnson patent discloses methods and systems for securely carrying out electronic transactions, including electronic drafts, where payment on at least one draft is contingent upon the removal of an associated contingency (Abs.). The option to remove each contingency associate with a draft can only be excised by an authenticated party or authenticated contingency remover (Abs.; C. 23, l. 5-15). A secure computer site that is controlled by a bank and that is accessible only to authenticated parties to a transaction is established (C. 4, l. 54-57). The site is configured to provide a description of a contingency and to include an option to remove the contingency, which is a precondition to the bank releasing payment on the draft to a payee of the draft (C. 4, l. 57-61). A Web seller receives a purchase request from a Web buyer (C. 12, l. 32-33). The Web buyer and the Web seller may then establish a secure communication channel to the secure computer site (C. 12, l. 42-46). Bank iDraft software at the Web seller's site receives the Web buyer's identification and executes an iDraft transaction (C. 12, l. 62-65). The Web buyer may be authenticated and the Web buyer's home bank may wish to check the now-authenticated Web buyer's current account balances or credit limits before authorizing or releasing payment on the iDraft transaction (C. 13, l. 44-49). Payment on the draft is released to the payee only

when a drawer of the draft is successfully authenticated by the bank and when the option to remove the contingency is timely exercised by an authenticated party that is authorized to remove the contingency (C. 4, l. 67-C. 5, l. 4). Once payment is released, the Web buyer's account is debited for the amount of the purchase and the Web seller's account is correspondingly credited for the amount of the purchase (C. 13, l. 49-54).

First, there is no suggestion or motivation to modify or combine the references. Walker teaches facilitating CPO transactions in which the buyers' conditions are posted as part of each offer and a seller becomes legally bound by those conditions upon acceptance of the CPO. Johnson teaches a form of third party escrow to facilitate electronic commerce transactions that include contingencies as preconditions to the third party, that is, a bank, releasing payment. The conditions taught by Walker and the contingencies taught by Johnson are distinct notions. A condition, per Walker, specifies a buyer's specific needs that must be met by a seller that chooses to accept, and thereby become legally bound by, the CPO to form a new contract. A contingency, per Johnson, is a precondition for a bank, which is a third party to an existing contract, to release payment or take other action following removal of the contingency under the contract by either party or the bank. Thus, a condition, as taught by Walker, originates with a buyer and must be met by a seller only after which a legally binding contract will be formed. A contingency, as taught by Johnson, can originate with and can be removed by a buyer, seller, or third party who are involved with a contract, and can be applicable to aspects of the transaction existing independently of the buyer's needs. Moreover, a contingency, as taught by Johnson, only applies to parties that are already legally bound by a contract and a third party, such as a bank. Thus, the post-contract formation contingency removal taught by Johnson teaches away from the pre-contract formation buyer condition specification taught by Walker and one of ordinary skill in the art would not be inclined to modify or combine these references.

Arguably, a reasonable expectation of success exists. Combining

Johnson's teaching would add post-contract formation contingency checking into the pre-contract formation condition specification taught by Walker, even though the pre-contract condition specification does not require, and can operate wholly independently from, post-contract formation contingency clearance.

Nevertheless, the combined references fail to teach or suggest all the claim limitations. Walker teaches communicating a binding CPO to potential sellers, in which acceptance alone binds the parties into a contract, after which the seller must perform and the buyer must pay. Johnson teaches a bank making payment to a seller upon the removal of contingencies by parties to an existing contract. Combining the teachings of Walker and Johnson provides pre-contract formation condition specification and post-contract formation contingency removal.

Independent Claims 1, 11, and 21 have been amended to clarify the inventive subject matter and better distinguish over Walker and Johnson. For instance, independent Claim 1 recites receiving an offer from a buyer for information that includes at least one contingency that provides an uncertainty that an event related to the information will occur; providing the information from a seller in response to the offer, the information including at least one condition about the at least one contingency, wherein satisfaction of each condition resolves the uncertainty to satisfy at least one of the contingencies and triggers at least part of a payment from the buyer; and receiving a first part of the payment upon the satisfaction of the at least one condition after the information has been provided to the buyer and the buyer has subsequently determined that the condition to resolve the uncertainty to satisfy the contingency has been satisfied by the event having occurred. Independent Claim 11 recites a receiving system that receives an offer from a buyer for information that includes at least one contingency that provides an uncertainty that an event related to the information will occur; a source for the information that provides the information in response to the offer, the information including at least one condition about the at least one contingency, wherein satisfaction of each condition resolves the uncertainty to satisfy at least one of the contingencies and triggers at least part of a payment from the buyer; and a

contingent payment processing system that receives a first part of the payment upon the satisfaction of the at least one condition after the information has been provided to the buyer and the buyer has subsequently determined that the condition to resolve the uncertainty to satisfy the contingency has been satisfied by the event having occurred. Independent Claim 21 recites receiving an offer from a buyer for information that includes at least one contingency that provides an uncertainty that an event related to the information will occur; providing the information from a seller in response to the offer, the information including at least one condition about the at least one contingency, wherein satisfaction of each condition resolves the uncertainty to satisfy at least one of the contingencies and triggers at least part of a payment from the buyer; and receiving a first part of the payment upon the satisfaction of the at least one condition after the information has been provided to the buyer and the buyer has subsequently determined that the condition to resolve the uncertainty to satisfy the contingency has been satisfied by the event having occurred. No new matter has been entered. Support can be found in the specification on p. 5, ¶ 2; p. 9, ¶ 3; p. 10, ¶ 1-p. 11, ¶ 2;. p. 12, ¶¶ 2-3; p. 13, ¶ 5.

In contrast, Walker teaches conditions that allow a buyer to tailor a CPO for his specific needs, such needs serving as preconditions to a potential seller that chooses to become legally bound in a contracting relationship with the buyer. Subsequently, any uncertainty as to the conditions imposed by the seller are moot because a contract has been formed. Johnson teaches contingency removal by an authorized party or third party and not by the occurrence of an event related to the information or goods. The Walker-Johnson combination fails to teach or suggest pre-contract formation contingencies that provide uncertainty that events related to the information will occur that are conditioned by a seller to trigger at least part of a payment from the buyer, per independent Claims 1, 11, and 21. Thus, the combined references fail to teach or suggest all the claim limitations.

Accordingly, a *prima facie* case of obviousness has not been shown for Independent Claims 1, 11, and 21. Claims 8, 9, 18, 19, 28, and 29 have been

canceled. Claims 2, 6, 7, and 10 are dependent upon Claim 1 and are patentable for the above-stated reasons, and as further distinguished by the limitations therein. Claims 12, 16, 17, and 20 are dependent upon Claim 11 and are patentable for the above-stated reasons, and as further distinguished by the limitations therein. Claims 22, 26, 27, and 30 are dependent upon Claim 21 and are patentable for the above-stated reasons, and as further distinguished by the limitations therein. Withdrawal of rejection under 35 U.S.C. § 103(a) is respectfully requested.

Claims 3-5, 13-15, and 23-25 stand rejected under 35 U.S.C. § 103(a) as being obvious over Walker as modified by Johnson as applied to Claim 1 and further in view of U.S. Patent No. 5,608,620, issued to Lundgren ("Lundgren"). Applicant traverses the rejection.

Claims 3-5 are dependent upon Claim 1 and are patentable for the reasons stated above with respect to the rejection for obviousness over the Walker-Johnson combination, and as further distinguishable over the Walker-Johnson-Lundgren combination by the limitations therein. Claims 13-15 are dependent upon Claim 11 and are patentable for the reasons stated above with respect to the rejection for obviousness over the Walker-Johnson combination, and as further distinguishable over the Walker-Johnson-Lundgren combination by the limitations therein. Claims 23-25 are dependent upon Claim 21 and are patentable for the reasons stated above with respect to the rejection for obviousness over the Walker-Johnson combination, and as further distinguishable over the Walker-Johnson-Lundgren combination by the limitations therein. Withdrawal of rejection under 35 U.S.C. § 103(a) is respectfully requested.

Claims 31-33 are new. No new matter has been entered. Support can also be found in the specification on p. 5, ¶ 2; p. 9, ¶ 3; p. 10, ¶ 1-p. 11, ¶ 2;. p. 12, ¶¶ 2-3; p. 13, ¶ 5.

The prior art made of record and not relied upon has been reviewed by the applicant and is considered to be no more pertinent than the prior art references already applied.

Claims 1-7, 10-17, 20-27, and 30-33 are believed to be in condition for allowance. Entry of the foregoing amendments and new claims are requested. A Notice of Allowance is earnestly solicited. Please contact the undersigned at (206) 381-3900 regarding any questions or concerns associated with the present matter.

Respectfully submitted,

Dated: March 29, 2006

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